

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MISSOURI STATE CONFERENCE OF THE, )  
NATIONAL ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED PEOPLE, et al., )

Plaintiffs, )

vs. )

FERGUSON-FLORISSANT SCHOOL DISTRICT, )  
et al., )

Defendants. )

Case No. 4:14 CV 2077 RWS

**DEFENDANT FERGUSON-FLORISSANT SCHOOL DISTRICT'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION TO RE-OPEN CASE FOR ADDITIONAL EVIDENCE**

COMES NOW Defendant Ferguson-Florissant School District ("District") and for states as follows in support of its Motion to re-open this case for additional evidence.

It is within the district court's discretion to reopen a case to admit new evidence. *Dent v Beazer Materials and Servs., Inc.*, 156 F.3d 523, 533 (4<sup>th</sup> Cir. 1998). When considering whether to admit new evidence, the court considers three factors: (1) whether the evidence sought to be introduced is especially important and probative; (2) whether the moving party's explanation for failing to introduce the evidence earlier is bona fide; and (3) whether reopening will cause undue prejudice to the nonmoving party. *Rivera-Flores v. Puerto Rico Tel. Co.*, 64 F.3d 742, 746 (1<sup>st</sup> Cir. 1995).

The District would like to introduce the certified election results for April 5, 2016, in which two candidates were elected to the FFSD's Board of Education. There were four (4) candidates vying for two (2) seats on the Board. Connie Harge was the first place candidate with 36.53% and 4,572 votes. Ms. Harge is an African American female. Leslie Hogshead, an incumbent the District identified as an African American preferred candidate in her previous election, was the second place winner with 28.07% and 3,513 votes. Roger Hines, an African American male was third with 23.23% and 2,907 votes. Donna M. Dameron, a white female was fourth with 10.84% and 1,357 votes. Both Roger Hines and Donna Dameron ran unsuccessfully in 2015.

The 2016 election resulted in the addition of one African American board member and the re-election of an African American preferred incumbent. While the District does not have expert analysis on Ms. Harge's success, her vote total alone indicates she was preferred by both African American and white voters. Her clear front-runner status is similar to Dr. Graves' win in 2015 when both parties agree she was the top choice among African Americans voters and the second choice of white voters.

Currently, there are three African American Board members on the FFSD Board. They are Donna Thurman (elected in 2014), Courtney Graves (elected in 2015) and Connie Harge (elected in 2016). In addition, Leslie Hogshead, an African American preferred candidate was re-elected in 2016. The last three elections support the District's argument that African Americans, as the largest group and the majority of the voters, have an equal opportunity to elect representatives of their choice to the Board.

These election results are important and probative given that an African American candidate was elected in 2016. *Levy v Lexington Co. S. Carolina School District Three Board of Trustees*, 589 F.3d 708, 713 (4<sup>th</sup> Cir. 2009). “The ultimate question in any section 2 case must be posed in the present tense, not the past tense.” “Though past elections may be probative of racially polarized voting, they become less so as environmental change occurs. In particular, elections that provide insights into past history are less probative than those that mirror the current political reality.” *Uno v. City of Holyoke*, 72 F.3d 973, 990 (1<sup>st</sup> Cir. 1995). In addition, the District has a bona fide explanation for failing to introduce this evidence earlier: such evidence was not available until after the bench trial concluded. Finally, allowing this evidence into the record does not cause undue prejudice to Plaintiffs as they are permitted to test and rebut the evidence presented by the District. *Collins v City of Norfolk, Va. (“Collins II”)*, 883 F.2d 1232, 1243 (4<sup>th</sup> Cir. 1989); *Westwego Citizens for Better Gov’t v. City of Westwego*, 906 F.2d 1042, 1045 (5<sup>th</sup> Cir. 1990); *Levy v Lexington Co. S. Carolina School District Three Board of Trustees*, 589 F.3d 708, 713 (4<sup>th</sup> Cir. 2009).

“It is generally understood that a trial court abuses its discretion if its refusal to reopen works an ‘injustice’ in the particular circumstances.” *Rivera-Flores*, 64 F.3d at 746. Failure to consider the 2016 election results would create such an injustice.

For the foregoing reasons, the District respectfully moves this Court grant its motion to reopen the case to admit the certified election results for the 2016 District Board of Education contest.

Respectfully submitted,

CROTZER & ORMSBY, LLC

/s/ Cindy Reeds Ormsby

Cindy Reeds Ormsby, ED#50986MO

Angela B. Gabel, ED#58227MO

130 S. Bemiston, Suite 602

Clayton, MO 63105

314.726.3040/314.726.5120 (fax)

John A. Safarli, *pro hac vice*

200 W. Thomas St., Suite 500

Seattle, WA 98119

206.441.4455/206.441.8484 (fax)

*Attorneys for Defendant Ferguson-  
Florissant School District*

### **CERTIFICATE OF SERVICE**

On April 22, 2016, a copy of the foregoing was electronically filed using the e-filing system, thereby serving electronic copies via email to all named parties.

/s/ Cindy Reeds Ormsby